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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,765	01/09/2002	David P. Sonnier	SONNIER 4	8338
47394	7590	11/05/2007		
HITT GAINES, PC ALCATEL-LUCENT PO BOX 832570 RICHARDSON, TX 75083			EXAMINER MATTIS, JASON E	
			ART UNIT 2616	PAPER NUMBER
			NOTIFICATION DATE 11/05/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@hittgaines.com

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Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/044,765

Applicant(s)

SONNIER, DAVID P.

Examiner

Jason E. Mattis

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

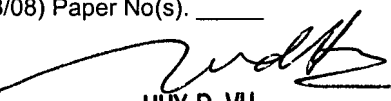
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,3-8,10-15 and 17-20.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached response to arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 3. NOTE: amendments add a newly required claim limitation.

DETAILED ACTION

1. This Advisory Action is in response to the Amendment After-Final filed 10/15/07. Claims 1, 3-8, 10-15, and 17-20 are currently pending in the application.

Response to Arguments

2. Applicant's arguments filed 10/15/07 have been fully considered but they are not persuasive.

First, it is pointed out that although the Applicant believes that the claim amendments do not add newly claimed subject matter, the Examiner respectfully disagrees. The change of a limitation in from the alternative (using the term "or") to a non-alternative (using the term "and") does further limit the claim and add a newly claimed limitation.

In response to Applicant's argument that Dell et al. discloses always processing packets in a FIFO that contains the highest priority before packets in other FIFOs and thus is different from the claimed invention, the Examiner respectfully disagrees. First, it is pointed out that the priority arbitration disclosed by Dell et al. whereby high priority class arbitration always overrides low priority class arbitration is only in a single embodiment and not essential to the invention of Dell et al. Next, although the Applicant points out that the specification of the present Application discloses a situation where a lower priority packet is transferred to a destination before a higher priority

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packet, this argument is moot, since there is no claim limitation necessitating this situation. The independent claims merely contain limitations similar to "scheduling packets... based on said priority summary..." and there is no limitation requiring a lower priority packet to be scheduled before a higher priority packet.

In response to Applicant's argument that none of the cited reference discloses that a "priority summarizer also prioritizes for an n packet FIFO that is to received a highest priority packet", the Examiner respectfully disagrees. First, as discussed above, the claim limitation requiring this step is a newly added limitation due to the claim amendment; however it is believed that Lo et al. does disclose this newly required claim limitation. Lo et al. discloses using a different transmit FIFO entry point circuit 410-416 for each different transmission priority level (See column 9 lines 31-33 of Lo et al.). Since all packets having the highest priority go to the transmit FIFO entry point circuit having corresponding to the highest priority, the pointer used by Lo et al. to sort packets corresponding to the highest priority transmit FIFO entry point circuit inherently also corresponds to the transmit FIFO entry point circuit that is to received a highest priority packet. Thus, Lo et al. does disclose this claim limitation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason E. Mattis whose telephone number is (571) 272-3154. The examiner can normally be reached on M-F 8AM-5:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jem

A handwritten signature in black ink, appearing to read 'Huy D. Vu', with a long horizontal line extending to the right.

HUY D. VU
SUPERVISORY PATENT EXAMINER
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